

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----x  
:  
DANYELL THOMAS, RASHAUN F. FRAZER,  
ANDRAE WHALEY and ELENI MIGLIS,  
individually and on behalf of all other employees  
similarly situated

Plaintiffs

v.

:  
:  
Civil Action No. 16-cv-8160  
:  
:

BED BATH AND BEYOND, INC.

Defendant.  
-----x

**DECLARATION OF JOE CARPINO**

I, JOE CARPINO, based on my personal knowledge of the facts stated herein, testify by

Declaration as follows:

1. I am over the age of 18 and am otherwise competent to testify to the matters contained in this Declaration, and if so called, would testify to the facts below.
2. All of the statements in this Declaration are true and accurate to the best of my knowledge.
3. Every Bed Bath and Beyond Inc. ("BBB") store is different. As such, the facts set forth in this Declaration are based on my personal knowledge from experience working in specific BBB stores.
4. I became employed by BBB on November 10, 2003, as a Department Manager. In 2004, I was promoted to Assistant Store Manager. Later in 2004, I was promoted to Store Manager. I was promoted to District Manager, my current position, in 2006. Over the course of

my career as a District Manager for BBB, I have been responsible for approximately seventeen (17) stores in total.

5. In my capacity as District Manager, I currently oversee seven (7) New York City stores, including all five (5) of BBB's stores in Manhattan, one (1) in Brooklyn, and one (1) in the Bronx. Of the seven (7) stores within my region, three are very high volume stores, including Store 42, located at 620 6<sup>th</sup> Avenue in New York City's Chelsea neighborhood, and Store 361, located at 410 East 61<sup>st</sup> Street on the Upper East Side of New York City. Stores 42 and 361 are amongst the highest volume BBB stores in the United States.

6. Typically, a BBB District Manager has responsibility for a number of stores in a particular geographic area. Reporting to the District Manager are Store Managers, each of whom is responsible for a single store. The Store Managers, in turn, have Assistant Store Managers reporting to them. In the New York City region, each store has between three (3) and twelve (12) Assistant Store Managers. Each store has between one (1) and eighteen (18) Department Managers who report to the Assistant Store Managers. Assistant Store Managers also oversee hourly Store Associates. The number of hourly Associates varies greatly from store to store, with Store 42 having upwards of 300 Associates and Store 361 having upwards of 150 Associates.

7. BBB employs Department Managers for numerous departments, including Customer Service, Merchandising, Front-End, Receiving, Freight, Training, and specialty departments, such as wedding or fine china departments. The Departments at each store differ depending upon volume or customer base. For example, three of my stores (including Stores 42 and 361) have fine china departments, while the remaining four of my stores do not. Stores 42 and 361 in NYC have a gourmet food department, which only appears in some BBB stores.

8. Often the amount of additional overtime worked by a Department Manager depended on which department a manager worked in. For example, a Department Manager in Merchandising would have had a number of opportunities to work overtime throughout the year because there is more freedom in promoting the sale of goods, and more creativity required for effective presentation of the goods in store locations. A Department Manager in Freight had different opportunities for overtime because deliveries to the store were routinely scheduled for certain set times of the day.

9. Department Managers working in some of the highest volume stores (such as Stores 42 and 361 in Manhattan) consistently worked, on average, more overtime hours throughout the year than Department Managers in mid or low volume stores.

10. Upon being hired, Department Managers were required to complete a Manager Development Program while simultaneously serving in their role as Department Manager. There was no hard deadline by which Department Managers must complete this training, and sometimes it took months. Department Managers were paid for training time, and thus worked more overtime hours when they were balancing both their training and workload. Department Managers in the New York City stores typically took longer to complete the training due to the demands of their job.

11. Specific times of the year also impacted the availability of overtime opportunities. For example, in January and February, stores typically conducted "inventory." This was a process where every piece of merchandise in the store was physically counted. When inventory was conducted, Department Managers were given the choice to work additional hours to contribute to the store's efforts. Additionally, stores that are located near college campuses tended to see a significant spike in overtime hours worked during August, when students are

furnishing their dormitories. Occasionally, BBB sets up tent sales on college campuses to accommodate the increase in business. This also required overtime work. Holidays presented opportunities for overtime as well, especially in store locations that extend their hours to accommodate extra customer traffic.

12. Additionally, Department Managers' overtime opportunities were impacted as a result of being assigned to be the Manager On Duty ("MOD"), or the Key-Holder On-Duty. These roles were assigned by the Store Manager and shifts typically went to the more experienced or better performing Department Managers. The role of an MOD differs depending on the store. For example, MOD's in Store 42 manage specific areas of the store, while MOD's in lower volume stores manage the entire store. Either way, in order to complete all of their normal work in addition to taking these shifts, these Department Managers may have had to work overtime. For example, Key-Holders On-Duty are required to open and/or close a store location. If a Store Associate was still with a customer at the time of store closing, the Key-Holder On-Duty would have been required to stay as well, so that he or she could lock up at the end of the day. New York City stores also tended to close later than other stores in New York due to the level of customers in New York City who come in later at night. Therefore, Key-Holders in New York City would typically have worked more overtime than Key-Holders in other stores.

13. Due to their high volume of sales, New York City stores have historically offered Department Managers many additional opportunities for overtime. For example, while certain BBB locations are in close proximity to one or two college campuses, New York City has several major universities that drive sales, and, consequently, August overtime opportunities, to BBB Department Managers. Moreover, many students who relocate to New York City for school



utilize BBB's "Pack & Hold" service, which allows customers to shop in their hometown stores and then pick everything up at a BBB store near their school campus. This service consumes a significant amount of time, and, due to the number of students who move to New York City each year, it resulted in a lot of overtime for Department Managers within New York City. Store Managers' selection of the Department Managers responsible for overseeing the "Pack & Hold" service also impacted overtime opportunities.

14. Additionally, due to the film industry's presence in the New York City area, BBB had sporadically been used as the setting for the filming of movies and television shows. Tasks involved with preparing the store for filming and cleaning up afterwards provided Department Managers with an opportunity for overtime hours that did not exist in other markets around the country.

15. Furthermore, New York City stores have a significant wedding registry business, which increased overtime work. Stores in Manhattan have attracted more wedding registry business than stores in the outer boroughs of the city leading to increased overtime hours for some Department Managers.

16. Freight delivery in the higher volume New York City stores occurred seven (7) nights per week, whereas some of the other stores only received freight five (5) nights per week. Though the higher volume stores have more associates on staff to unload the freight, the greater amount of inventory coming in and then subsequently being shelved and sold resulted in more overtime for the Department Managers in the higher volume stores.

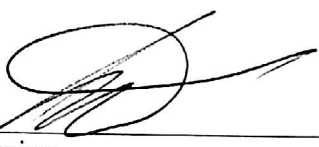
17. The higher volume New York City stores also undergo remodeling, or reshaping, several times each year. These changes often corresponded with seasonal inventory shifts; however, very high volume stores like Stores 42 and 361 tended to see more significant

reshaping than other stores around the country because these stores have the resources to execute bigger stylistic changes and the sales numbers to justify the expense. Furthermore, some stores in New York City (including Stores 42 and 361) remain open overnight. Thus, Department Managers in these stores had increased ability to stay late to complete tasks, impacting the number of overtime hours worked.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 7 day of April, 2017.

By: \_\_\_\_\_

  
Joe Carpino  
District Manager  
Bed Bath and Beyond Inc.